

REMARKS

Status of Claims

Claims 1-8 are pending. Claim 1 has been canceled, Claims 2-7 have been amended, and Claim 9 has been added as new. Claims 2-9 remain for consideration upon entry of the present Amendment. No new matter has been added.

Objections To The Specification

The Examiner has objected to the Description of the Drawings wherein “Fig. 6” required revision to reflect additional figures. Applicant’s amendments to the specification submitted hereinabove, particularly with reference to Paragraph 0016, obviates this objection. Applicant hereby requests reconsideration of the Specification as amended.

Claim Rejections – 35 USC § 112

The Examiner has rejected Claim 8 under 35 USC § 112 as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant has amended Claim 8 to recite a subsequent step of a method claim rather than additional structure relied upon under the former “means for connecting” claim element. Applicant, therefore, respectfully submits that Claim 8, as amended, distinctly claims the subject matter which Applicant regards as her invention.

Claim Rejections – 35 U.S.C. §102(b)

Claims 1-3 and 8 have been rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,700,507 to Allen (hereinafter “Allen”). The Examiner states that, as to Claims 1-3 and 8, Allen discloses a plant support and container similar to Applicant’s invention. Applicant respectfully traverses Examiner’s rejection in view of Applicant’s amended claims submitted hereinabove, and Applicant asserts that Allen teaches away from Applicant’s invention.

Allen discloses a Tree Bark Protector that “can be fitted over the base portion of a tree trunk where it widens to the soil.” (See Allen, Title and Abstract). The Allen device “is intended to be used to protect the trunks of young trees from the widespread use of nylon line trimmers and the damage created by lawnmowers.” (See Allen, Column 1, lines 5-7). “One aspect of the invention is that it has a bell-shaped base to allow for the base of the tree or bud-union, not previously allowed for.” (See Allen, Column 1, lines 33-36). Referring to Fig. 2 of Allen, numeral (3) relates to the base or bud-union of the tree, and numeral (4) refers to the hub constructed in a manner to allow for the curvature. (See Allen, Column 1, lines 63-64, and Column 2, lines 1-3).

Allen fails to disclose, teach, or suggest what Applicant claims in Claim 2 and 8, namely, a plurality of arcuate wall sections wherein the plurality of arcuate wall sections cooperate to define a substantially continuous shape periphery, base and upper edge, the shape periphery defining a base diameter, an upper edge diameter, and at least one diameter disposed between the base diameter and upper edge diameter such that the arcuate wall section defines a shorter diameter disposed between the base diameter and upper edge diameter. This claim limitation solves a problem encountered in the prior art

by creating a support for one or more bulbs, perennials, annuals, and like multitudes of stems, such that the foliage is held off of the earth and suitable housing is provided for sprouting or out-of-bloom plants. (See Specification, Paragraphs 5, 8, 16 and Figures 1 and 4).

In contrast to Applicant's invention, Allen's device would harm a plurality of growing bulbs, perennials, annuals, and like multitudes of stems because the hub would unnecessarily constrict the foliage. (See Allen, Figure 4, numerals 10, 11, and 12). In fact, Allen fails to teach that providing a suitably wide opening for sprouting plants is in any way problematic. In failing to disclose the problem, Allen fails to anticipate a solution.

To anticipate a claim under 35 U.S.C. §102, a single reference must disclose each and every element of the claimed invention. *Lewmar Marine v. Barient Inc.*, 3 USPQ2d 1766 (Fed. Cir. 1987). Absence from the reference of any claimed element negates anticipation. *Kloster Speedsteel AB v. Crucible Inc.*, 793 F.2d 1565 (Fed. Cir. 1986). Because Allen fails to disclose, teach, or suggest every element of the claimed invention, namely, "a plurality of arcuate wall sections wherein the plurality of arcuate wall sections cooperate to define a substantially continuous shape periphery, base and upper edge, the shape periphery defining a base diameter, an upper edge diameter, and at least one diameter disposed between the base diameter and upper edge diameter such that the arcuate wall section defines a shorter diameter disposed between the base diameter and upper edge diameter," as recited in Applicant's amended Claim 2 and 8, Allen does not disclose each and every element of the claimed invention. For at least the foregoing reasons, Allen does not anticipate Claim 2 or Claim 8.

Dependent claims, by definition, add limitations that further define the subject matter of the independent claims from which they depend. Because Claim 3 depends from Claim 2, and because Claim 2 is believed to be allowable for at least the reasons presented above, Claim 3, because it adds limitations that further define the subject matter of independent Claim 2, is allowable. Applicant therefore respectfully submits that Claims 2-3 and 8 are allowable.

Claim Rejections – 35 U.S.C. §103(a)

Claims 4-7 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Allen in view of U.S. Patent No. 5,878,528 to Pattyn (hereinafter referred to as “Pattyn”). The Examiner reiterates the objections with respect to anticipation of Applicant’s invention by Allen and further states that it would have been obvious to one of ordinary skill in the art, in light of Pattyn, to provide a fastening means.

Applicant respectfully asserts that the teachings of Pattyn fail to overcome the shortcomings of Allen with respect to rendering Applicant’s invention obvious. Pattyn exhibits the same shortcomings of Allen with respect to failing to teach that providing a suitably wide opening for sprouting plants is in any way problematic. In failing to disclose the problem, Allen in view of Pattyn similarly fails to render a solution obvious.

To establish a prima facie case of obviousness for a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). Because Allen and Pattyn fail to disclose, teach, or suggest what Applicant claims in Claims 4 and 6, namely, “a plurality of arcuate wall sections wherein the plurality of arcuate wall sections cooperate to define a substantially

continuous shape periphery, base and upper edge, the shape periphery defining a base diameter, an upper edge diameter, and at least one diameter disposed between the base diameter and upper edge diameter such that the arcuate wall section defines a shorter diameter disposed between the base diameter and upper edge diameter,” as recited in Applicant’s amended Claims 4 and 6, Allen and Pattyn fail to teach all of the claim limitations of Applicant’s invention. Consequently, because not all of the claim limitations are taught by the cited references, Applicant’s Claims 4 and 6 are necessarily non-obvious. Because Claims 5 and 7 depend from Claims 4 and 6, respectively, and because claims that depend from a claim that is non-obvious are themselves necessarily non-obvious, Claims 5 and 7 are necessarily non-obvious. Applicant, therefore, respectfully submits that Claims 4-7 are allowable.

Conclusion

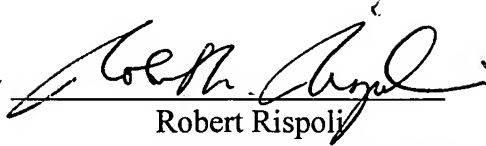
If the Examiner believes that a telephone conference with Applicant’s attorney would be advantageous to the disposition of this case, the Examiner is invited to telephone the undersigned.

A Credit Card Payment Form PTO-2038 authorizing payment in the amount of \$225 is enclosed for the fee for the extension of time. If additional charges are incurred with respect to this Amendment, please telephone the undersigned.

Respectfully submitted,

November 23, 2005

By

A handwritten signature in black ink, appearing to read "Robert Rispoli", is written over a horizontal line.

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